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REVIEWS OF BOOKS

A History of Matrimonial Institutions, chiefly in England and the United States, with an Introductory Analysis of the Literature and the Theories of Primitive Marriage and the Family. By GEORGE ELLIOTT HOWARD, Ph.D. (Chicago: The University of Chicago Press; Callaghan and Company; London: T. Fisher Unwin. 1904. Three vols., pp. xv, 473; xv, 497; xv, 449.)

To students of sociology this work is one of importance. Unlike most which are published in three volumes, it could not well be reduced to two. It is divided into three parts. The first, which occupies half of the first volume, discusses primitive marriage and early rules of divorce. The second part, occupying the rest of volume I and part of volume II, takes up marriage and divorce in connection with the history of the Christian church, and with special reference to English laws and customs. The third and longest part, occupying most of the second and third volumes, explains the historical course of marriage and divorce in the United States, and is followed by a particularly full bibliographical index.

Part I gives a comprehensive and fair summary of the various theories of sociologists on the subject under consideration, accompanied by brief statements of the author's own conclusions. Like Westermarck and Hellwald, he does not shut his eyes to the fact that with other animals than man there is a sexual consort which may not unfairly be called marriage (I, 7); sometimes, as in the chelonia or tortoise group, monogamistic (I, 95), and, with birds, resulting in the establishment of a temporary family. Nor is he unwilling to apply the term marriage to the sexual relations which may have been maintained in common between the men and women of a particular tribe or horde. "Group marriages" between all or many of the members of the tribe may precede marriages between any particular pairs of them (I, 47, 53). He is not prepared to agree with Lubbock that monogamy is an invasion of what was a common right of all the members of the tribe (I, 120), and inclines to the position that in a loose form it is the earliest kind of sexual association. The probability of this he bases not on any moral or spiritual superiority in man, but on the fact that it seems to be required by the principles of organic evolution (I, 91). So far as morality is concerned, if a strict adherence to the marriage covenant for better or for worse be one of its consequences, the birds are more moral than men; for among them there is no divorce (I, 96). Monogamy, in the opinion of Dr. Howard, is not peculiarly a characteristic of advanced civilization. The institution of marriage develops in a circle,

and monogamy is found in its strictest form among the most backward races (I, 141, 150).

The author favors the view that not force but contract, and that a contract with the woman herself, is the foundation of primeval marriage (I, 178, 216). This would seem to be the case with the lower animals (I, 202, 222). Whether, however, the contract may not be at first with the father or head of the family, and later with the bride, must be regarded as yet in doubt. Among savages, still, a man frequently gains a wife by exchanging his sister or his daughter for her (I, 185). Post's suggestion is favored that consent marriages may be the normal type; then marriages by purchase or tribal consent follow; and then, with advancing civilization, the course be retraced to the starting-point, and the contract again made only or primarily with the bride (I, 202, 222).

In part II the course of the Christian church as to the celebration of marriage, culminating in the decree of the Council of Trent, is clearly traced, and the validity of the simply consensual marriage under the common law maintained (I, 316).

The chapter on the Protestant conception of marriage is a full and valuable one, and Luther's vacillating attitude is well described. The early troth-plights and child marriages of the Elizabethan age, as illustrated by the recent publications of the Early English Text Society, are explained (I, 399), and due place accorded to Cromwell's Civil Marriage Act in the succeeding century, with its provision for a public registry (I, 408, 418, 424). Following Stölzel, the author holds that the leaders in the Reformation held, as did Milton later, that such a breach of the marriage covenant as the Scriptures allowed to be a cause of divorce put an end to the marriage *ipso facto*, if the injured party so willed it (II, 69, 90).

The discussion of American matrimonial institutions covers familiar ground, but covers it well, and is founded on wide reading, including the consultation of many original documents, yet unprinted, in the offices of Massachusetts courts and the New York state archives (II, 121, 329). Due emphasis is laid on the regulation of marriage in New England by town orders (II, 143). Instances are given, from manuscript court files of two Massachusetts counties, of sentences of both adulteresses and adulterers to the brand of the scarlet letter (II, 175). The New England betrothal, with its similarity in form and consequences to the English *sponsalia*, is explained (II, 179, 185, 199), and the more or less tolerated bundling or proof-nights which sometimes preceded or followed it. A chapter on slave marriages in New England is especially interesting (II, 215-226). Two chapters are devoted to marriage in the southern and middle colonies. Colonial divorce requires less space. Where permitted, it was at first, as in England, a quasi-judicial proceeding. In Massachusetts and Connecticut the "assistants" or council granted them. From 1760 to 1786, ninety-six decrees were passed in the former government, a full docket of which

is published from court manuscripts, and may be useful to ancestor-hunters (II, 342, 344). South of Maryland no legislative divorces *a vinculo* were to be had (II, 367, III, 43). In New York and perhaps in New Jersey, the governor was the divorce court (II, 384).

The legislation of the states regarding marriage and divorce is laboriously detailed. Divorce *a vinculo* was a remedy to be had from the first in the courts of several; in others at the south it could come only from the legislature (III, 31). Often divorce has assumed the character of a log-rolling measure, and twenty or thirty couples have been released from the bond of marriage by a single bill (III, 42, 98). In South Carolina, except for a brief period during the days of Reconstruction, divorce has been impossible for any cause (III, 76). In some, by constitutional provisions, following the English usage, it must be initiated by a judicial and consummated by a legislative proceeding (III, 39, 43). In the territories the power to divorce was early assumed and continuously exercised by the legislative authorities, until they were deprived of such jurisdiction in 1886. The author has overlooked the full vindication of this practice in Maynard *vs.* Hill, 125 *United States Reports*, 191 (1888).

The closing chapter sums up the author's own opinions. He deplores the adherence of most of the states of the Union to the doctrine that a marriage may be illegal and yet valid, or, in other words, that statutes as to licenses, etc., are treated as merely directory (III, 170). He would place the celebration of marriage in the hands of local registrars (III, 193); introduce the divorce *nisi*, and in determining the sufficient causes let every particular political society admit such, and such only, as best promote its happiness (III, 220). For progress in such directions he finds the best hope in the conferences of state commissioners on uniform legislation, held in connection with the annual meetings of the American Bar Association (III, 223). But back of all legislation must come a closer family life, made all the closer because of the narrowing field within which state socialism is gradually contracting the father's powers (III, 226), and of the liberation of woman from every mark of inequality (III, 235). She must not be regarded as a child-bearing animal. Marriages and children may well be fewer, if they are better, and coeducation opens a door toward the formation of life-unions on lofty ideals (III, 242-256). In such unions "natural and sexual selection should play a smaller and artificial selection a larger rôle" (III, 258). In this chapter Dr. Howard is evidently holding himself in. He has more to say yet, and sociologists will be glad to hear from him further in the direction of the restraint of marriage in the interest of posterity.

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